

Montana Water Court
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FILED
02/08/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41U-0064-R-2023
Stern, Anika
1.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Frank R. Thompson; Mindy Ann
Thompson; Arthur D. Thompson

CASE 41U-0064-R-2023
41U 38494-00
41U 38495-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41U 38494-00 was decreed with the following DNRC issue remarks:

THE PLACE OF USE, THOUGH NOT OBJECTED TO, WAS CHANGED TO REFLECT THE CHANGE IN ACRES IRRIGATED. THIS MAY BE SET FOR HEARING DURING THE PRELIMINARY DECREE PHASE.
THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

2. Claim 41U 38495-00 was decreed with the following DNRC issue remarks:

THE PLACE OF USE, THOUGH NOT OBJECTED TO, WAS CHANGED TO REFLECT THE CHANGE IN ACRES IRRIGATED. THIS MAY BE SET FOR HEARING DURING THE PRELIMINARY DECREE PHASE.
WHEN THIS CLAIM WAS ORIGINALLY DECREED, THE PERIOD OF DIVERSION WAS NOT INCLUDED AS AN ELEMENT OF THE CLAIM. IN 2008, THE PERIOD OF DIVERSION ELEMENT WAS ADDED TO ALL CLAIM ABSTRACTS. IT IS NOT CERTAIN IF THE PERIOD OF DIVERSION DATES ADDED TO THIS CLAIM ACCURATELY REFLECT THE HISTORICAL PERIOD OF DIVERSION. MORE INFORMATION IS REQUIRED.
THE LEGAL LAND DESCRIPTION FOR POINTS OF DIVERSION NO. 1, 2, AND 3 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THE CLAIMED POINTS OF DIVERSION CANNOT BE CONFIRMED.
EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

3. No objections were filed.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

CONCLUSIONS OF LAW

1. The issue remarks decreed on claim 41U 38495-00 are not supported by evidence sufficient to overcome the prima facie status afforded the point of diversion of the claim.

2. The issue remarks decreed on both claims provided notice of changes made after completion of the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree. As no objections were filed, no further proceedings are required.

RECOMMENDATION

1. The issue remarks should be removed from the claims in this Case with no changes to the elements of the claims.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Electronically Signed By:
Hon. Judge Anika Stern

Wed, Feb 08 2023 01:00:48 PM

Service via USPS Mail:

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 38494-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: FRANK R THOMPSON
4945 S FORK TRL
WOLF CREEK, MT 59648 8515

MINDY ANN THOMPSON
4945 S FORK TRL
WOLF CREEK, MT 59648 8515

Priority Date: MAY 13, 1877

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS
ONSTREAM RESERVOIR.

Volume: 480.00 AC-FT

Climatic Area: 5 - LOW

***Maximum Acres:** 140.00

Source Name: BORRELL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESE	10	16N	5W	LEWIS AND CLARK

Period of Diversion: MAY 15 TO SEPTEMBER 20

Diversion Means: HEADGATE

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSESE	10	16N	5W	LEWIS AND CLARK

Diversion to Reservoir: DIVERSION # 1

Period of Use: MAY 15 TO SEPTEMBER 20

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	140.00		SE	10	16N	5W	LEWIS AND CLARK

Total: 140.00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 38495-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: FRANK R THOMPSON
4945 S FORK TRL
WOLF CREEK, MT 59648 8515

ARTHUR D THOMPSON
7950 BIRDTAIL RD
WOLF CREEK, MT 59648 8602

MINDY ANN THOMPSON
4945 S FORK TRL
WOLF CREEK, MT 59648 8515

Priority Date: DECEMBER 3, 1901
Type of Historical Right: FILED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.
Volume: 357.00 AC-FT
Climatic Area: 5 - LOW
***Maximum Acres:** 97.00
Source Name: PRUDEN CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWSW	11	16N	5W	LEWIS AND CLARK
Period of Diversion:	MAY 15 TO SEPTEMBER 20					
Diversion Means:	HEADGATE					
2		SWSWSE	11	16N	5W	LEWIS AND CLARK
Period of Diversion:	MAY 15 TO SEPTEMBER 20					
Diversion Means:	HEADGATE					
3		NWSESW	11	16N	5W	LEWIS AND CLARK
Period of Diversion:	MAY 15 TO SEPTEMBER 20					
Diversion Means:	HEADGATE					

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNWSW	11	16N	5W	LEWIS AND CLARK

Diversion to Reservoir: DIVERSION # 1

Period of Use: MAY 15 TO SEPTEMBER 20

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.00		SWSWSE	11	16N	5W	LEWIS AND CLARK
2	80.00		SW	11	16N	5W	LEWIS AND CLARK
3	15.00		SENE	10	16N	5W	LEWIS AND CLARK
Total:	<u>97.00</u>						